

1 ***Columbia River Initiative***

2 ***Draft Policy Bill***

3 ***December 17, 2004***

4
5 AN ACT Relating to management of water resources for the mainstem of the Columbia
6 River; adding a new chapter to Title 90 RCW; and declaring an emergency.

7
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

9
10 **NEW SECTION. Section 1.**

11 The legislature finds that the Columbia River is a vital economic, cultural and
12 natural resource to the State and its residents, and that the water of mainstem of the river
13 provides critical support for municipal and agricultural uses, fish and wildlife habitat,
14 power production, and scenic and recreational uses. While conflict and competition
15 among these uses has prevailed in recent years, the legislature recognizes the need for
16 state action and state investment to reliably secure the economic and natural resource
17 benefits associated with the water of the Columbia River. It is the intent of the legislature
18 to establish a new state water resource management program for the mainstem of the
19 Columbia River in order to meet the water supply needs of growing communities and the
20 local economies on which they depend, and to do so in a manner that protects and
21 enhances the quality of the natural environment, including stream flows necessary for the
22 preservation of environmental values.

23
24 **NEW SECTION. Section 2.**

25 (1) The Columbia River Mainstem Water Management Program is hereby
26 established. The goals of this water management program are to:

27 (a) meet the water supply needs of growing communities and the local economies
28 on which they depend by providing a timely and affordable supply of water that will
29 allow for new and reliable uses of water from the Columbia River mainstem, and,

1 (b) to manage water so as to protect and enhance the quality of the natural
2 environment, including stream flows necessary for the preservation of environmental
3 values by securing and dedicating water to improve stream flows in the river mainstem.

4 (2) The objectives of the program are:

5 (a) to improve the reliability of water rights issued by the department of ecology
6 between 1980 and 2003 that are subject to minimum instream flows or other mitigation
7 conditions to protect stream flows;

8 (b) to improve stream flows during the primary period of fish outmigration on the
9 mainstem; and,

10 (c) to mitigate for the stream flow impacts of future water right permits as
11 provided by the program.

12 (3) The program shall be administered by the department of ecology.

13
14 **NEW SECTION. Section 3.**

15 (1) To implement the program established by section 2 of this act, the department
16 of ecology is directed to:

17 (a) acquire water for the Columbia River mainstem through the implementation of
18 water conservation programs, changes in water management with existing water storage
19 and conveyance facilities, the development of new or expanded multipurpose water
20 storage projects, the acquisition of water rights from willing sellers or donors, and other
21 means, as authorized and funded by the legislature for the purposes of the program;

22 (b) secure water acquired under subsection (1)(a) of this section in a Columbia
23 River Mainstem Account (Mainstem Account) under the state trust water right program;
24 and,

25 (c) manage the Mainstem Account to make water available as mitigation to
26 willing applicants and to improve stream flows in the Columbia River mainstem for the
27 benefit of fish.

28 (2) Water may be deposited in the Mainstem Account in accordance with
29 applicable state laws for water right changes, amendments, and transfers, or through
30 government-to-government agreements, contracts, assignments, and other instruments
31 that ensure that a highly reliable and long-term supply of water, in sufficient quantity, is

1 available in the Mainstem Account to meet identified needs. For the purposes of this
2 chapter, the department may secure water from Canada and other governments to be
3 deposited in, and accounted for, in the Mainstem Account.

4 (3) Two thirds of the water secured and deposited in the Mainstem Account shall
5 be allocated as mitigation water for new water uses through a state mitigation program;
6 and one third of the water shall be permanently retained in the Mainstem Account to
7 improve stream flows.

8 (4) The department of ecology shall manage water in the Mainstem Account that
9 is dedicated to improving stream flows in collaboration with the department of fish and
10 wildlife. The department of fish and wildlife shall consult with natural resource managers
11 in tribal governments and federal agencies on how to maximize the benefits to fish from
12 this water.

13 (5) The amount of water in the Mainstem Account shall not govern, be used to
14 regulate, or be a determinative factor in the department's water management decisions for
15 water in rivers that are tributary to the Columbia River.

16
17 NEW SECTION. Section 4.

18 (1) The requirements of this section are applicable to any new water uses
19 authorized by the department of ecology under this chapter.

20 (2) Any new water uses that would reduce the stream flows of the Columbia River
21 mainstem below Chief Joseph dam during the period of April through August must be
22 mitigated to avoid any reduction in stream flows during this period. Mitigation must be
23 secured and in place before new water uses are authorized under this chapter.

24 (3) Applicants for new water right permits may develop their own mitigation
25 proposal, to be included as part of their application, or they may participate in the state's
26 mitigation program by requesting water from the Columbia River Mainstem Account
27 (Mainstem Account). Mitigation proposals developed by an applicant must meet the
28 requirements of subsection (2) of this section. Where an applicant develops their own
29 mitigation proposal, the department must allocate water from the Mainstem Account to
30 benefit streamflows in the amount of one half of the mitigation amount.

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NEW SECTION. Section 5.

(1) An applicant for a new water right permit, or a party seeking mitigation water for their existing water right permit, from the Columbia River mainstem may request water from the state’s Columbia River Mainstem Account (Mainstem Account). If sufficient mitigation water is available in the account, the department shall enter into an agreement with the requesting party to make mitigation water available consistent with the requirements of this chapter.

(2) In exchange for mitigation water from the Mainstem Account, the department shall require and collect an annual payment based on the quantity of mitigation water specified in the agreement. For new permits authorized under this chapter that will rely on mitigation from the Mainstem Account, the department shall condition these permits to require annual payment for the mitigation. The department shall deposit those payments in the Columbia River Mainstem Investment Account (Investment Account) created under section (7) of this act.

(3) The amount of the annual payment shall be established by rule by the department. In determining the payment rates, the department shall consider the following factors:

- (a) recovering the state's costs of acquiring water for the Mainstem Account, including the administrative costs for managing the Mainstem Account; and,
- (b) ensuring an affordable supply of water to meet economic and community development goals.

(4) In all cases, the costs of acquiring water dedicated to improving stream flows shall be borne by the public and not by the water user.

NEW SECTION. Section 6.

(1) Where mitigation that meets the requirements of Section (4)(2) of this act is secured, the department of ecology is directed to:

- (a) issue permits which could be exercised during periods of drought in lieu of existing water right permits and certificates that are subject to interruption when stream flows on the mainstem are below adopted minimum instream flows; and,

1 (b) process pending and future applications for new water right permits for the
2 mainstem of the Columbia River.

3 (2) Water users seeking drought permits under subsection 6(1)(a) of this section
4 must submit an application by no later than December 31, 2008.

5 (3) All applications for new water rights under this chapter will be processed in
6 accordance with RCW 90.03.250 through 330 and other applicable provisions of law.
7 For applications where mitigation that meets the requirements of Section (4)(2) is
8 secured, the department may process those applications ahead of previously filed
9 applications for which mitigation is not secured.

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11 NEW SECTION. **Section 7.**

12 (1) The Columbia River Mainstem Investment Account is hereby created in the
13 state treasury. Expenditures from the account are subject to appropriation by the
14 legislature. The account shall receive all proceeds of Columbia River related mitigation
15 agreements entered into by the department of ecology under this chapter and any other
16 moneys appropriated by the legislature.

17 (2) Expenditures from the investment account may be used only to carry out the
18 purposes of this chapter, including, but not limited to the following activities:

19 (a) site evaluation, feasibility, environmental studies, design and engineering, and
20 construction of off-channel storage facilities, including aquifer storage facilities;

21 (b) activities and investments necessary to acquire water from conservation
22 projects;

23 (c) infrastructure evaluation, feasibility, environmental evaluation, design and
24 engineering, and construction modifying existing storage facilities to provide additional
25 capacity;

26 (d) installation and monitoring stream flow and water measurement devices;

27 (e) administration of the Columbia River water management program and
28 compliance activities associated with the program;

29 (f) acquisition of water through agreements with other governments or federal
30 agencies;

31 (g) acquisition of existing state water rights from willing sellers; and

1 (h) bond issuance, sales, and debt service.

2 (3) The investment account shall retain all interest earned on deposits thereto.

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4 NEW SECTION. **Section 8.**

5 (1) The department shall adopt rules as necessary to implement the program
6 established by section 2 of this act, consistent with this chapter and with other applicable
7 laws.

8 (2) The department shall establish a monitoring program to track conditions
9 relevant to the effectiveness of the water management program, including, but not limited
10 to, the condition of stream flows in the mainstem, and the number, types and quantities of
11 water uses approved under this chapter.

12 (3) The department shall implement a compliance program, consistent with RCW
13 90.03.605, to ensure compliance with the requirements of this chapter. The department
14 shall appoint one or more watermasters for the Columbia River mainstem to provide local
15 technical assistance, and to conduct other necessary compliance actions.

16

17 NEW SECTION. **Section 9.**

18 The department shall prepare a biennial report on the status of the Columbia River
19 mainstem water management program. The report shall be transmitted to the appropriate
20 standing committees of the legislature and the governor by no later than December 31 of
21 even-numbered years. The report shall include, but not be limited to, information and
22 evaluation of the status of the Columbia River Mainstem Account, the number, types and
23 quantities of authorized new uses of water, the number and amount of payments collected
24 under the program, a summary of compliance monitoring and enforcement activities on
25 the Columbia River mainstem, including water use measurement and reporting, the
26 stream flow conditions in the mainstem and in the primary tributaries to the Columbia
27 River, and the current and anticipated future conditions of water supplies in the Mainstem
28 Account and how those water supplies correspond to current and anticipated future water
29 needs.

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31 NEW SECTION. **Section 10.**

1 Ten years after the effective date of this act, and every ten years thereafter, the
2 department shall conduct a formal review of the effectiveness of the Columbia River
3 mainstem water management program. The review shall include independent evaluations
4 of the economic and scientific information that provide the premises of the program. As
5 part of the biennial report required by section 9 of this act, the department shall notify the
6 governor and legislature of the timing and proposed process for the formal review and
7 shall request funding to conduct the necessary independent reviews as part of their
8 biennial budget request to the Governor. Upon completion of the review, the department
9 shall prepare and transmit a report of the findings of the review, including any
10 recommendations for legislative changes to the program.

11
12 NEW SECTION. **Section 11.**

13 Nothing in this act may be interpreted or administered in a manner that impairs or
14 diminishes a valid water right, including rights established under state law and rights
15 established under federal law.

16
17 NEW SECTION. **Section 12.**

18 If any provision of this act or its application to any person or circumstance is held
19 invalid, the remainder of the act or the application of the provision to other persons or
20 circumstances are not affected.

21
22 NEW SECTION. **Section 13.**

23 This act is necessary for the immediate preservation of the public peace, health, or
24 safety, or support of the state government and its existing public institutions, and takes
25 effect immediately.

26
27 NEW SECTION. **Section 14.**

28 Sections 1 through 12 of this act constitute a new chapter in Title 90 RCW.